



TOWN OF GREENWICH

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Board of Ethics

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Annual Report of the Board of Ethics

Fiscal Year 2013-2014

The Board of Ethics is pleased to submit the following report of its activities for the fiscal year ending June 30, 2014. This report is required to be submitted to the Board of Selectmen and the Representative Town Meeting pursuant to Section 2.12 (c) of the Greenwich Code of Ethics.

Executive Summary

There were no complaints or requests for advisory opinions filed with the Board of Ethics during the 2013-2014 Fiscal Year. Consequently, the Board has been able to focus additional attention on the Town's ethics reporting system, which has been a subject of concern in our reports for several years. This year, after meeting with the 1st Selectman, the Town Attorney and the Director of the Department of Human Resources the Board approved a draft of proposed technical amendments to the Code of Ethics to permit the Board to establish an on-line filing system. This was submitted to the 1st Selectman for consideration.

Seven Town Officers filed financial disclosure forms covering the 2013-2014 Fiscal Year. This level is slightly higher than last year, but significantly lower than the number of filings for prior fiscal years. As with the 2014-2015 period, the Board is pleased to note that most of the decrease from prior years was due to the absence of filings by Town employees stating that they have nothing to disclose. In addition, there has been an increase in the filing of reports that disclose the employment of family members by the Town. This indicates that recent efforts to educate Town employees about the filing requirements have had an effect.

The Board has benefited from the continuation of budgeted funds to support its operations. However, the Board intends to request to receive an additional allocation of funds to secure any professional assistance that may be necessary in connection with the preliminary investigation of a complaint, should the need for such funds arise. Without

the availability of such funds, the Board could be hampered in making the kind of confidential preliminary investigation of complaints that the law contemplates.

Complaints of Violations of the Code

The Board did not receive a single complaint alleging a violation of the Code during the 2013-2014 Fiscal Year.

At times, members of the Board receive informal communications that do not follow the procedures the Board has established for making a complaint under the Code. When these are received, it is our practice to respond to the sender (if known), refer them to the provisions of the Code that might apply to the subject matter and describe the procedures for filing a formal complaint, should it prove appropriate.

The Board has adopted a Statement of Procedures that describes the process by which complaints should be submitted to the Board. Because individuals are often unclear about essential facts, the Statement of Procedures recommends that complainants identify themselves. This makes it easier for the Board to solicit additional information, which may be necessary in order to determine whether a preliminary investigation of the matter dealt with in the complaint should be commenced.

The Code of Ethics does not require complainants to identify themselves or complaints to be submitted in any particular form, however. As a result, the Board considers it best to review informal and anonymous submissions carefully and make a determination in appropriate circumstances that certain requirements of its Statement of Procedures should be waived in the interest of better serving the purposes of the Code.

As described elsewhere in this report, the Board has been active in efforts to increase awareness of both the requirements of the Code and the procedures for filing complaints. Due to the high level of cooperation and support that the Board has experienced in connection with these efforts, we are inclined to believe that the absence of complaints is indicative of a high level of ethical behavior in Town Government.

Requests for Advisory Opinions

The Board of Ethics received one request for an advisory opinion during the 2013-2014 Fiscal Year. This request concerned the ability of a member of the BET to vote on and participate in discussions of tax rates, the overall Town budget and the budget of the Board of Education while the member's spouse was employed as a teacher by the Board of Education. A copy of the opinion rendered by the Board is attached to this report.

Members of the Board and the Board as a whole also provided informal guidance to various Town Officers who requested such assistance either at meetings of the Board or on an ex-parte basis.

Annual Disclosure Statements

Review of Filings. As of September 17, 2016, twenty-seven Town Officers filed thirty-one annual disclosure reports with the Town Clerk covering the 2013-2014 Fiscal Year. The following chart summarizes the results of a review of these disclosure forms:

	RTM	Town Employees & Elected Officials	Appointees	Total
Fully Compliant	6	4	1	11
Not Compliant	<u>2</u>	<u>10</u>	<u>8</u>	<u>20</u>
Total	8	14	9	31

Although the total number of filings increased this year, most of the increase in filings was due to confusion over the Board's efforts to encourage filings. Several individuals who attempted to assist the Board in obtaining reports did not understand that Town Officers are not required to file a report unless they have an interest to report. Accordingly, they advised various Town employees and appointed officials to file reports showing nothing to report. As a result, a significant percentage of the reports that were filed were not fully compliant with the requirements of the Code.

The Board's review of the remaining reports that were filed does show some improvement in the awareness and understanding of the Code's requirements on the part of those filing the reports. While there have been a significant number of non-notarized filings in prior years, all the forms filed this year were notarized. In addition, there were several reports by Town Officers disclosing that members of their family were employed by the Town.

Of the twelve forms filed with the Town Clerk showing interests to report eleven were fully compliant with the Code, while the other was substantially compliant, but failed to provide certain required information¹. While the Board believes that there continues to be room for improvement in reporting under the current system, it feels that both the level of reporting and the degree of compliance in reports that are filed would significantly increase if the mechanics of the reporting system were enhanced and brought up to date. In particular, an on-line filing system would reduce the amount of time required for Town officers to file and allow for prompts and other interactive features that could provide guidance and help eliminate inadvertent mistakes.

¹ Three persons filed to disclose an interest in a family member's employment by the Town, but did not disclose the actual amount involved in the transaction. While the Board notes that Code of Ethics requires an amount to be stated, it is sensitive to the fact that such information would be readily available to the public and might be embarrassing to request from the family member.

Many Town Officers appear to believe that the disclosure requirement is only intended as means of discouraging *impermissible* interests. They therefore assume incorrectly that they are not required to report their *permissible* interests. This is a serious misconception. In fact, the Code does not assume that people will report their impermissible interests or be dissuaded from having them by the threat that they will be prosecuted for failing to report them. Rather, it assumes that public confidence is improved when *permissible* financial interests are disclosed and requires disclosure of these interests as the best way to reassure the public that they do not influence Town decisions with respect to various transactions.

Plans and Recommendations

Continuing Initiatives. During the 2013-2014 Fiscal Year, the Board will continue to be available to provide information about the requirements of the Code as requested by Town Officers and the community at large. As in the past, members of the Board also stand ready to provide training to assist Town Officers in better understanding the who, why, what, where and when of the disclosure process as well as the ways in which the provisions of the Code affect them generally.

Recommendations. Following a review of its activities and experiences in the 2013-2014 Fiscal Year, the Board wishes to make the following recommendations to the Board of Selectmen and the RTM:

1. Adopt Technical Amendments to the Code to Modernize the Town's Ethics Reporting System. The reporting provisions of the Code of Ethics indicate that requiring disclosure of financial interest is an important Town policy. Implicit in this policy is the assumption that disclosure is a beneficial process that can enhance public confidence in the operations of Town government. The current system, however, can be difficult to comply with. Town Officers are required to keep track of all financial interests that they may have in Town transactions throughout each fiscal year and must report on them after the close of the fiscal year. This is understandably difficult, since it can require record keeping and reporting on transactions that are over a year old. The Board believes that a system of reporting that would require disclosure at the time that a Town Officer becomes aware that he or she has an interest in a Town transaction, rather than retroactively at year end, may be a more efficacious system for all concerned. We believe that this real time system would be both easier for Town Officers to comply with and provide more timely and useful information to the public. There are also questions as to whether the requirement that statements be filed under oath is efficacious. The Board believes that other less onerous mechanisms, including an on-line reporting system, can be used to ensure that the reports that are filed are accurate. The Board recommends consideration of technical amendments to the Code of Ethics that would allow a more up-to-date system to be

implemented. Such amendments could also clarify the reporting requirements in areas where confusion now seems to exist.

2. Continue Training Efforts. Training is an important component of any ethics program. The Board encourages the Department of Human Resources to continue its efforts to ensure that the recent changes made by the Town-wide Ethics Policy are fully understood by all Town employees. In addition, the Board encourages the Town to pursue additional training for elected and appointed Town officers, as well as Town employees, with respect to the requirements of the Code of Ethics in general, and in particular as to reporting requirements.
3. Include Funds for Investigative Expenses in the Board's Budget. The Town's Code of Ethics Board requires the Board to investigate all complaints that are filed with the Board. Under the Board's procedures, and as permitted by state law, the Board conducts a confidential preliminary investigation to determine whether there are grounds for a further investigation. Unless the Board has an allocation of funds that are reasonable to cover possible expenses of a preliminary investigation, it faces a Hobson's choice of either compromising the quality of the investigation or compromising the confidentiality of the investigation by requesting additional funds to pursue it. Therefore, it will intends to request a larger set-a-side of funds for this purpose in the coming fiscal year.

The Board invites comments from Town Officers or members of the general public on both its activities and plans and recommendations. Interested persons may request to address the Board at any of its public meetings or speak to any member of the Board personally by calling (888) 432 2777.

September 17, 2014

Advisory Opinion 14-01

Statement of Facts:

A person who has been nominated as a member of the Board of Estimate and Taxation (the “BET”) is married to a teacher in the Greenwich public school system and has requested an advisory opinion as to how this might affect the ability to serve effectively on the BET. The primary issue is the degree to which it might be considered appropriate to refrain from participating in discussions or votes on matters concerning the budget of the public schools or, even more broadly, the Town budget or the establishment of tax rates. This person, referred to in this opinion as the “applicant,” is currently an elected member of the Representative Town Meeting (the “RTM”) and is therefore an acting Town Officer eligible to apply for an advisory opinion from the Board of Ethics.

The following is a summary of facts as presented in the applicant’s request for an advisory opinion:

The applicant’s spouse has been employed in the public school system for twelve years. The collective bargaining agreement between the Board of Education and the Greenwich Education Association establishes the spouse’s salary. This agreement covers approximately 888 full time employees, with a full time base payroll of approximately \$78,275,782. The spouse’s salary and benefits are determined by a formula of general application which applies two factors: educational attainment of the teacher (e.g. masters or doctorate level degrees) and years of service in the Greenwich Schools. These factors determine the salaries of every teacher, in a systematic manner, without regard to performance evaluations or

other discretionary factors. Accordingly, there is no opportunity for anyone to exert influence on the compensation of the applicant's spouse specifically, as distinct from all teachers with the same attainment and seniority. The applicant states that "it would not be practical for me to abstain from participating in the analysis and voting to approve the schools budget," noting that the BET includes an equal number of members from each party.

At a public meeting during which the request was discussed, the applicant further advised the Board of Ethics that the BET does not have any role in reviewing or otherwise acting upon the collective bargaining agreements between the Board of Education and the Greenwich Education Association, prior to their execution.

Applicable Code Sections:

Section 4 of the Code of Ethics provides that "No town officer having a substantial financial interest in any transaction with the town or in any action to be taken by the town shall use his office to exert his influence or to vote on any such transaction or action."

Section (2) subparagraph (2) of the Code defines "substantial financial interest" to mean "any financial interest, direct or indirect, which is more than nominal and which is not common to the interest of other citizens of the town."

Questions Presented:

(1) Is the interest of a Town Officer in a collective bargaining agreement covering his or her spouse a “substantial financial interest” within the meaning of the Code of Ethics?

(2) In BET meetings, may a member who is married to a public school teacher vote: (A) on the establishment of tax rates, which provide funding for the overall Town budget, of which teachers’ salaries are a substantial part, (B) to approve or disapprove the Town budget, which includes allocations of funds for the Board of Education, or (C) on matters relating to the public schools budget generally?

(3) Is a member of the BET “exerting influence” on Town transactions or actions, within the meaning of the Code of Ethics, by participating in BET discussions and reviews relating to the establishment of tax rates, spending limits and budget targets ?

Discussion

Town employees typically can rely on superiors or subordinates to handle matters in which their participation might create a real or perceived conflict of interest. Similarly, members of an appointed board, commission or other body may have no responsibility to represent any constituency other than the Town as a whole, which can alleviate concerns about whether those bodies can properly discharge their duties without the participation of a member who wishes to avoid the appearance of a real or perceived personal interest. In addition, some bodies whose members are appointed to represent specific constituencies have alternates who are ready to serve when a member might have a conflict of interest. Elected officials, such as members of the BET, have a responsibility

to represent their constituencies that cannot be delegated to others, however. For elected officials, avoiding the appearance of a conflict can have ethical implications of its own, since non-participation may result in a failure to properly discharge their responsibility to represent a specific geographic or political constituency. As a result, it is necessary to carefully analyze the facts and the provisions of the Code in each particular instance before recommending that an elected official refrain from participation in a matter in order to avoid the possibility of a violation of the Code of Ethics .

In order to respond properly to the applicant's request in this case, such an analysis requires an understanding of the role and procedures of the BET as well an appreciation of the responsibilities that elected officials have in general. The applicant has previously sought guidance with respect to the impact of spousal employment on service to the Town as an elected member of the RTM and as an appointee to its Budget Overview Committee². In making the current request, the applicant notes that there are similarities and differences between the activities of members of the RTM and the BET. Clearly members of the BET act as elected officials and feel a special responsibility to their individual constituencies, as indicated by the applicant's concern over the impact of abstaining from participation in a major matter under consideration by the BET. But this concern also highlights the importance of each individual vote in influencing the outcome.

THE ROLE OF THE BET

² In Advisory Opinion 09-03, noting the role of the RTM as the body responsible for adopting the Code, the Board indicated that it would "give particular deference" to the actions of RTM members following specific procedures adopted by the RTM to address conflicts of interest. The Board also established safe harbor guidelines under which RTM members, after ensuring that all other members were aware of the existence and nature of a personal interest in a matter, might participate in discussions of and votes on the matter at general meetings of the RTM.

A singular distinction of the RTM is that, in its primary function of setting property tax rates for the Town, all of its members have a tangible financial interest as residents and taxpayers. If the Code of Ethics did not exclude interests “common to the interest of other citizens of the Town” from the definition of substantial financial interest, its members would effectively have to recuse themselves from doing their job.

It is rather evident that members of the BET have a common interest with other citizens of the Town in the case of establishing tax rates. But the degree to which their interests are common interests is less clear in the case of other activities, such as reviews of departmental budgets². For example, a BET member may have a higher interest in the budget of the Board of Education than other citizens in the Town if he or she has children attending public schools or, as in the instant case, a spouse whose salary is included in the budget. How far the exemption for interests common to the interest of other citizens of the Town extends is a matter the Code does not clarify, but rather leaves to Board of Ethics to determine on a case by case basis.

COMMON AND PERSONAL INTERESTS

The applicant has a common interest in the mill rates set by the BET because the rates are of general applicability. The ability of members of the BET to avoid the financial burdens, or gain the financial benefits, associated with the establishment of a particular rate is no greater or less than any other resident of the Town. By contrast, the Board Of Education’s contract with the Greenwich Education Association applies only to

² In Advisory Opinion 12-01, the Board responded to a request from a member of the BET regarding the effect of handling a matter before the Board of Assessment Appeal. The BET clearly had no involvement in the property valuation that was being appealed, nor did it have a role in the selection or compensation of the members of the Board of Assessment Appeals. There was, however, a possibility of future involvement in the matter by the office of the Town Attorney, whose budget is included in the normal reviews the BET makes on an annual basis.

members of the Association. As this contract contains provisions concerning salaries, seniority, grievance procedures and other conditions of employment related to the spouse's services as a teacher, the applicant is indirectly interested in this contract and any actions the Town takes in connection with it. The contract also contains provisions which convey rights with respect to health coverage, pensions and other matters which the applicant has a direct interest in independent of any services performed by the applicant for the Town. These interests are clearly personal because most other Town residents are not affected financially in the same manner as the applicant. Therefore, the applicant's interest in the contract and any actions the Town takes in implementing it constitutes a "substantial personal financial interest" within the meaning of the Code.

While the nature of the Town Officer's interest in an action or transaction typically does not change, the degree of influence the Town Officer might have over a particular matter may change depending on the timing, nature and significance of the action or transaction. Although the applicant may have a substantial personal interest in the Greenwich Education Association contract, the BET is not involved in negotiating or approving the contract itself. Rather, the contract is negotiated by other Town officials and approved by the RTM. Moreover, the nature of the BET's budget review process makes it unlikely that a member could influence any specific Town action or transaction in which he or she may have an interest. In this process, the Town budget is presented to the BET as a whole, and the budget of the Board of Education as a component of that overall budget is typically reviewed in the context of overall Town expenditures, rather than as a matter of line by line analysis. In this regard, the BET acts in many respects as

the budget review committee for the Town as a whole, attempting to ensure that expenditures are kept within the revenues estimated to be collected.

The BET is not involved in, and does not act upon or approve, collective bargaining agreements such as the contract between the Board of Education and the Greenwich Education Association. It is therefore difficult to see how any vote by the BET with respect to the Town Budget as a whole, or the establishment of tax rates, would have any effect on the applicant's personal interest in the Greenwich Education Association contract. Even though the collection of taxes may be a necessary step in providing funds to be used to pay for the contract, the BET's votes establishing tax rates do not affect the availability of funds to pay for the contract any more than they affect the availability of funds to pay any other expenditure. Only in the remote and extraordinary circumstance where action by the BET might influence the outcome of the contract negotiations, would the applicant have to refrain from voting because of a personal interest³.

³ Noting that the size of the RTM as a whole made the impact of any individual vote less influential, in Advisory Opinion 09-03 the Board drew a distinction between participation in discussions and votes in the RTM as a whole and participation in committee matters, noting that the recommendations and reports of committees were generally considered more influential than the views of individual members and that less votes were required for committee actions. Although members were permitted to make appearances before their committees to the same extent that other RTM members could, the Board indicated that any participation in extended discussion and debate in support of a position favorable to the member's private interest would be likely to be seen as an effort to "exert influence" within the meaning of the Code. This followed the Board's admonition in Advisory Opinion 07-01 that, while an RTM committee member may participate in limited discussions on a matter where his or her interest is disclosed, that participation is "fraught with danger" and the Board will find a violation of the Code if the member is shown to have attempted to influence the outcome, rather than simply inform the committee about relevant facts and considerations. While the role of the BET is similar in some ways to that of the RTM's Budget Review Committee, it should be noted that its individual members have the potential to be much more influential, since the BET alone has the ability to refuse to approve the mill rate necessary to fund the Town budget if it has objections to any part of the budget, while any recommendations made by the RTM's Budget Review Committee must be acceptable to the RTM as a whole in order to take ultimate effect.

Similarly, whether the applicant can engage in BET discussions concerning the budget of the Board of Education will depend on the degree to which the items being discussed have a connection to interests common to others in the Town or to personal interests the applicant may have. In this regard, it is important to note that the Board of Education develops and promulgates the schools budget and the BET only reviews it as part of its consideration of the Town budget in its entirety. Thus the BET does not normally vote to approve or reject specific portions of the school budget, but typically limits its recommendations to setting overall targets for the budget. In this regard, its actions are in furtherance of the common interest all citizens have in the Town's budget. To the extent that the BET's review of the Board of Education's budget were to specifically focus on the contract with the Greenwich Education Association, however, the applicant's personal interest would have a greater role.

Conclusions

1. The Board of Ethics considers the collective bargaining agreement between the Board of Education and the Greenwich Education Association to be a Town "transaction" and considers any actions taken in connection with the approval, execution or implementation of that agreement to be Town "actions" within the meaning of the Code of Ethics. A Town Officer who is a spouse of an individual employed under that agreement has direct and indirect interests that are "substantial financial interests" within the meaning of the Code.

2. The BET does not vote on the collective bargaining agreement under which teachers are employed or on the specific terms and conditions of such employment. Absent conditions relating such votes to the terms and conditions of the spouse's

employment, a BET member who is married to a public school teacher may vote: (A) on the establishment of tax rates, (B) to approve or disapprove the Town budget, and (C) on matters relating to the budget of the public schools generally.

3. The role of the BET is generally limited to establishing broad budget targets and setting tax rates of general applicability, which are matters in which the members' personal interests are closely aligned with other citizens of the Town. Therefore, unless such discussions are linked specifically to the matter of the collective bargaining agreement with the Greenwich Education Association or otherwise to the terms and conditions of the spouse's employment in such a way that they could be influenced by the member's actions as a BET member, the employment of the applicant's wife as a teacher in the Greenwich public schools should not prevent the member from discussing the overall Town budget, the budget of the Board of Education, or any proposals for tax rates, general spending limits or the establishment of overall budget targets. By participating in BET discussions and reviews relating to the establishment of tax rates, spending limits and budget targets generally, the applicant would not be considered to be "exerting influence" on Town transactions or actions, within the meaning of the Code of Ethics unless such discussions were to relate specifically to the terms and conditions of employment of the applicant's spouse.

Thank you for your sensitivity to the ethical issues involved in this opinion.